IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRTIETH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

HON'BLE SRI DEVINDER GUPTA, THE CHIEF JUSTICE

and
HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION No.12427 of 2004

Between:

M/s Medical Waste Solutions,

rep. by its Proprietor Smt. P Sreelatha,
Office at 41/545, Kothapeta,

Kurnool 518004,

Factory at Chetla Mallapuram Village,

Kallur Mandal,
Kurnool District.

..... PETITIONER

AND

1. The Pollution Control Board,

   II Floor, HUDA Complex,

   Maitrivanam,
   Ameerpet, Hyderabad - 500 038.
2. M/s Bio-Medi Clean Services,

   Sy.Nos. 62/1 & 62/2, Sarparajapuram Village,

Veldurthi Mandal,

Kurnool District.

3. The Government of Andhra Pradesh,

rep. by its Secretary, Forest Energy & Environment,
Secretariat, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to pass an order or orders or writ more particularly one in the nature of Writ of Mandamus declaring the action of the 1st respondent in rejecting the consent for establishment of Common Bio-Medical Waste Treatment Facility at Sy.Nos. 200/2 and 202/2 of Chatla Mallapuram Village, Kallur Mandal, Kurnool District by the Clearance Committee in its meeting held on 26-6-2004 is arbitrary, illegal, unjust and violative of the principles of natural justice besides being contrary to the Bio-Medical Waste (Management & Handling) Rules, 1998 and the petitioner's rights guaranteed under Art. 14, 19(1) (g) of the Constitution of India and consequently direct the 1st respondent to accord consent for establishment of Common Bio-Medical Waste Treatment Facility at Sy.Nos. 200/2 and 202/2, of Chatla Mallapuram Village, Kallur Mandal, Kurnool District to the petitioner herein.

For the Petitioner : Sri C.KODANDA RAM, Advocate.

For the Respondent No.1: Sri E.Kalyanaram, Senior counsel for A.P. Pollution Control Board.

For the Respondent No.2 : Sri K.G.Krishnamurthy, Advocate.

For the Respondent No.3 :Govt.Pleader for Forest

The Court made the following :

ORDER: (Per Hon'ble the Chief Justice)

Writ Petition was filed on 16th of July, 2004 by the petitioner questioning the action of first respondent–Board in rejecting the consent for establishment of Common Bio-Medical Waste Treatment Facility in Survey Nos.200/2 and 202/2 of Chatla Mallapuram village, Kallur Mandal, Kurnool district, in the Board meeting held on 26-06-2004. According to the petitioner, on 12-03-2003 an application was submitted for consent for establishment of Common Bio-Medical Waste Treatment Facility before the respondent Board, which was rejected and against the order of rejection

passed by the Pollution Control Board, which was displayed in the notice board, appeal was preferred before the appellate authority and the same was numbered as Appeal (SR) No.108 of 2004, but since there was no appellate authority constituted, interim order could not be obtained, therefore petitioner approached this Court.

Writ Petition is still at the admission stage and preliminary objection was raised by learned standing counsel for respondent - Board that this writ petition be not continued to be retained on the board in view of the fact that the appellate authority has since been constituted by the notification vide G.O.Ms.No.112 Environment, Forests, Science and Technology (Env.) Department dated 24-09-2004. G.O.Ms.No.112 dated
24-09-2004 was issued in exercise of the powers conferred under sub-section (1) read with sub-section (2) of Section 28 of the Water (Prevention and Control of Pollution) Act, 1974
(Central Act 6 of 1974) and sub-section (1) read with
sub-section (2) of Section 31 of Air (Prevention and Control of Pollution) Act, 1981 (Central Act 14 of 1981).

Learned standing counsel for the respondent Board submits that the challenge is to the order rejecting the prayer for issuance of consent for establishment of Common Bio-Medical Waste Treatment Facility. This consent for establishment has nothing to do with the authorisation, which is required to be given under Bio-Medical Waste (Management and Handling) Rules, 1998. He submits that before the request for authorisation for permission by the prescribed authority for generation, collection, reception, storage, transportation, treatment, disposal and/or any other form of handling
bio-medical waste, is considered as per the guidelines and per the Rules, it is necessary to obtain consent for such establishment and the matter rests at that stage

and since such consent for establishment is a condition precedent under Water (Prevention and Control of Pollution) Act,1974 and Air (Prevention and Control of Pollution) Act, 1981, against an order passed under Section 25 of the Water (Prevention and Control of Pollution) Act, 1974, appeal is maintainable under Section 28 of the said Act.

Learned counsel for the petitioner submits that the appellate authority will exercise powers under the relevant provisions of Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 whereas application of the petitioner has to be considered as per relevant Rules under Bio-Medical Waste (Management and Handling) Rules, 1998 under which there is no appellate authority constituted, therefore the petitioner cannot be relegated to the position of availing of remedy before an authority which will have no jurisdiction to consider the question of legality and validity of rejection declining to grant consent for establishment of Common Bio-Medical Waste Treatment Facility.

We do not at this stage go into the question of jurisdiction of the appellate authority inasmuch as the petitioner has chosen to prefer appeal before the appellate authority which had at the relevant time no Presiding Officer and now by virtue of the notification issued in G.O.Ms.No.112 dated 24-09-2004, the order of rejection of consent for establishment of the said facility, which is required to be considered by the authority under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981, for which the appellate authority has been constituted, there is no question of considering the prayer for grant of authorisation, which is at a subsequent stage. In any case, we are of the view that the petitioner must avail of the statutory remedy of filing appeal and in case appeal is filed, the same has to be considered and examined by the appellate authority in

accordance with law. With leave and liberty granted to the petitioner to raise all the questions raised herein before the appellate authority including jurisdiction, we dismiss the writ petition.

Learned counsel for the petitioner further submits that there is status quo order operating, which should be continued. Since we are dismissing the writ petition with liberty reserved to raise all the questions, we leave it open to the appellate authority to consider such a prayer and examine whether any interim order is required to be issued or not. However, we order *status quo* for a period of one week from today so as to enable the appellate authority to pass appropriate orders on the interlocutory application after hearing the parties.

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DEVINDER GUPTA, C.J.

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C.V.RAMULU, J

30-09-2004

bsc

To

1. The Pollution Control Board,

II Floor, HUDA Complex,

Maitrivanam,
Ameerpet, Hyderabad - 500 038.

2. M/s Bio-Medi Clean Services,

Sy.Nos. 62/1 & 62/2, Sarparajapuram Village,
Veldurthi Mandal,

Kurnool District.

3. The Secretary, Forest Energy & Environment,
Government of Andhra Pradesh,

Secretariat, Hyderabad.

4. 2CCs to Govt. Pleader for Forests, High Court buildings,

Hyderabad (OUT)

5. 2CD copies